

A-2115

Consent Agreement to remove (1) multi-trunk River Birch and to reforest with two (2) Katsura trees of at least 2-½" in caliper that will grow to forty-five (45) or more in height in accordance with an approved Reforestation Plan

Ms. Jeanne Ruesch
1 Primrose Street

To: Board of Managers

Re: TOB Report: Proposed Resolution of Tree Take Down Appeals,

Case A-2115: Proposed removal of a River Birch from the front yard, Ms. Jeanne Ruesch, 1 Primrose Street

Ms. Jeanne Ruesch has filed an appeal of the Village Manager's decision to deny removal of a mature River Birch from the front yard of her 1 Primrose St. property. Ms. Ruesch was referred in late October to the Tree Ordinance Board. Ms. Ruesch had requested the River Birch removal to allay her concern that its roots might infiltrate her sewer line. The line had earlier this year been clogged with roots.

Village staff and the TOB chair requested Dr. Feather's opinion as to the threat which the Birch might present to the repaired sewer line. His opinion was that its roots would not infiltrate the line unless or until it should crack or become porous due to age or other reasons.

Members of the Board inspected the River Birch and potential sites for reforestation. The tree proposed for removal is multi-trunked, mature and well formed, highly visible from the street and about 20' high. Nonetheless, the TOB was unanimous in its conclusion that it was not a tree which, because of its age, size and outstanding quality should necessarily be retained if adequate arrangements might be made for reforestation.

Proposed reforestation: Mrs. Ruesch's reforestation proposal is to plant two Katsura trees (specifically, *Cercidiphyllum Japonica*, which grows to a height of 40-60 feet). One will be at (or very close to) the location where the Birch is to be taken down. The other will be about 20' eastward so that the two reforestation trees will frame a walkway and stairs connecting Ms. Ruesch's front and rear yards. This proposal was circulated on December 23 to the abutting and fronting neighbors and to members of the Tree Committee with a request that any comments they might have be reported to the TOB by January 1st. No comments were received.

Consent Agreement: Mrs. Ruesch has reviewed and offered no objection to a Consent Agreement in the same form as has been used in prior TOB actions, requiring maintenance of the reforestation trees until they reach maturity (defined as 24" in circumference measured at 4 ½ feet above grade).

Conclusion: The TOB believes that the proposed reforestation and Consent Agreement reflects a reasonable resolution of the issues in a manner consistent with Village Board policies and recommends its approval.

Submitted by Samuel Lawrence, chair, Tree Ordinance Board

Signed: Samuel A. Lawrence, chair, TOB

CONSENT AGREEMENT

RECITALS

CHEVY CHASE VILLAGE, hereinafter referred to as the "Village", is a Maryland municipal corporation which is authorized to and does regulate the removal, destruction and impairment of certain trees on private property as set forth in Chapter 17, entitled Urban Forest, of the Chevy Chase Village Code.

Stephen W. Porter and Jeanette Weaver Ruesch, Trustees of the marital Trust Under the Otto J. Ruesch 1992 Trust, and Jeanette Weaver Ruesch, individually, hereinafter referred to collectively as the "Owner", is a resident of the Village and owner of property in the Village, located at 1 Primrose St, consisting of Lot 30 and in Block 58, in the subdivision known as "SUBDIVISION RECORD PLAT LOTS 30 & 31, SECTION 2, CHEVY CHASE" as per plat recorded in Plat Book 192 at Plat 20982, among the Land Records of Montgomery County, Maryland.

The Owner requested a permit from the Village Manager under Section 17-3 of the Village Code to remove a river birch tree (the trunk of which measures more than 24 inches in circumference at 4 ½ feet above ground and therefore requires a permit for removal) located in her front yard. The Owner sought to remove the tree in order to prevent root infiltration to their sewer line. The Village Manager denied the permit for failure to meet any of the conditions set forth in Section 17-3.

Under Section 17-4 of the Village Code, the Owners have appealed the denial of the permit. Under Section 17-5 of the Village Code, the Board of Managers of Chevy Chase Village has delegated the initial administration of appeals under Section 17-4 to a three-member Tree Ordinance Board ("TOB"). The TOB members have met with the Owner's landscape architect and, after also consulting with the Village arborist, unanimously concluded that the tree proposed to be removed was not by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen, of such nature as to require its preservation and also that they could support its removal provided that adequate arrangements could be made to restore lost canopy by installing an appropriate replacement tree or trees.

The Owner agreed, if allowed to remove the River Birch, she will reforest by planting a two Katsura (*Cercidiphyllum Japonicum*) trees at locations shown on the attached plan. She has further agreed, should one or both of these reforestation trees for any reason have to be removed prior to growing to maturity (i.e. a circumference of 24") that she will install a replacement tree either at a location proximate to that of the initial reforestation tree(s).

On Dec. 23, 2013, the Chair of the TOB informed members of the Village Tree Committee and the residents owning properties confronting and abutting 1 Primrose Street of the proposed take down and reforestation, provided them with copies of the Owners' Landscape Plan, and requested that he be informed of any comments or concerns by January 1st, 2014. No comments were received.

Based on the foregoing, the TOB and Owner have developed the following Agreement:

NOW, THEREFORE, in consideration of the mutual undertakings and obligations herein contained, One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owner hereby agree and covenant as follows:

1. The Village will grant a permit to the Owner for the purpose of removing the river birch tree described above.
2. The Owner agrees to reforest within six months from the date that this permit is granted by planting two Katsura trees at the locations identified in the attached Landscape Plan and will notify the Village Manager when these trees have been planted.
3. The Owner further agrees that, should one or both of the reforestation trees referenced above become diseased, die, or for any other reason be removed prior to its reaching maturity (defined as the trunk growing to 24" circumference measured four and a half feet above ground level), they will plant a replacement tree or trees on at the location(s) of the tree that has been removed or at a site elsewhere on their property coordinated with the Village Manager.

4. Any changes or modifications to the foregoing arrangements shall require the further written consent of the Village, which may be withheld in the Village's sole discretion.
5. The Owner acknowledges that compliance with this Consent Agreement is necessary for the protection of the public health, safety and welfare of the residents of the Village and acknowledge and agree, in the event of Owners' breach of this Agreement, that the Village would not have an adequate remedy at law, and the Village shall be entitled to specific performance of the Owner's obligations and to injunctive relief related thereto without posting a bond or proving actual damages, in addition to any other remedies which may be available. The Owner further agrees that the costs incurred by the Village, including legal expenses, shall be charged to the Owners and may be assessed against the Owner's property along with property taxes. The Owner further agrees not to contest any action brought by the Village to obtain specific performance and injunctive relief under this Agreement. The Owners also agree that, if they fail to complete their reforestation obligations, the Village shall have the right to enter upon the Owner's property as it deems proper to install the reforestation tree.
6. The Owner also acknowledges that the Village and the public residing in the Village would incur substantial damages in the event of Owner's breach of the requirements of this Agreement, including, but not limited to, the costs of staff time, arborist time, and other expenses incurred in enforcing this Agreement and the diminution of the Village's tree canopy. The parties recognize the difficulty in computing actual damages and, accordingly, agree to liquidated damages for the aforesaid costs, delay, and harm to the public. The parties acknowledge that liquidated damages of \$1,500.00 are a reasonable estimate, at the time of the execution of this Agreement, of the damages to the Village and the public that will likely occur as a result of the Owners' failure to perform their obligations under this Agreement. The Owner acknowledges that the liquidated damages agreed to are not a penalty and that they, along with any costs incurred by the Village, including legal expenses, may be assessed against the Property along with property taxes.

7. The Owner shall be liable for her obligations hereunder and expressly waives any right to a jury trial.
8. By signing this Agreement the undersigned Owner represents to the Village that she is the Owner of the property described above at 1 Primrose Street.
9. By signing the Agreement, the Chairman of the TOB or his delegate signifies that the TOB has approved this Consent Agreement and has recommended its adoption by the Village Board of Managers.
10. By signing this Agreement, the Village Manager signifies that the Village Board of Managers has approved this Consent Agreement.
11. The effective date of this Consent Agreement is the date the Village Manager signs the Agreement signifying that she has been informed by the Village Board of Managers that the Consent Agreement has been approved.

Owner: Jeanne Ruesch

_____, 2014

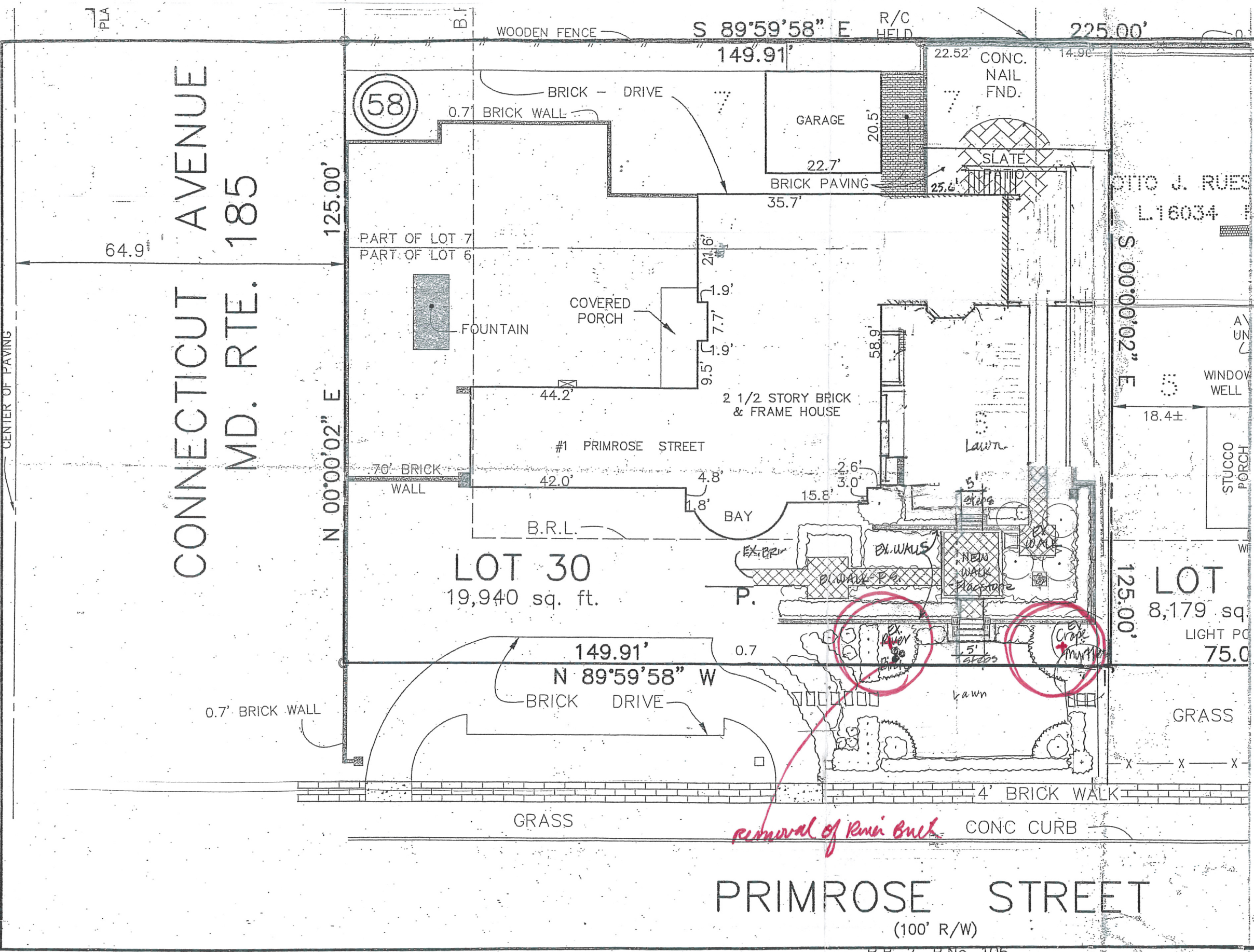
Owner: Stephen W. Porter

_____, 2014

Samuel A. Lawrence, on behalf
of the Tree Ordinance Board

_____, 2014

CHEVY CHASE VILLAGE



GUY WILLIAMS
cell 202.437.2618

Replace with 2 trees
either
~~Laegerstemia indica~~
'Natchez'
or ~~Cercidiphyllum japonicum~~
(KATSURA)
at least 2 1/2" caliper

removal of Runi Buell

DCA Landscape Architects, Inc.
1315 Wisconsin Avenue, NW
Washington, D.C. 20007
202/337-1160 (tel.) 202/337-4630 (fax)

THE ABOVE DRAWINGS AND SPECIFICATIONS AND THE IDEAS, DESIGNS AND ARRANGEMENTS REPRESENTED THEREIN ARE THE PROPERTY OF THE ARCHITECT. NO PART THEREOF SHALL BE COPIED, DISCLOSED TO OTHERS OR USED IN CONNECTION WITH ANY WORK OR PROJECT OR BY ANY OTHER PERSON FOR ANY PURPOSE OTHER THAN FOR THE SPECIFIC PROJECT FOR WHICH THEY HAVE BEEN PREPARED AND DEVELOPED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT. VISUAL CONTACT WITH THESE DRAWINGS OR SPECIFICATIONS SHALL CONSTITUTE CONCLUSIVE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.

WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALED DIMENSIONS. CONTRACTORS SHALL VERIFY, AND BE RESPONSIBLE FOR, ALL DIMENSIONS AND CONDITIONS ON THE JOB AND THIS OFFICE MUST BE NOTIFIED OF ANY VARIATIONS FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS. SHOP DETAILS MUST BE SUBMITTED TO THIS OFFICE FOR APPROVAL BEFORE PROCEEDING WITH FABRICATION.

RUESCH RESIDENCE
1 Primrose Street
Chevy Chase, MD 20815

SCALE: 1"=20'-0"	
DATE: 12-7-12	
REVISED:	
JOB NO.:	DRAWN BY:
OF	